

Hearing Date and Time: January 12, 2007 at 10:00 a.m.
Supplemental Response Date and Time: January 10, 2007 at 4:00 p.m.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
333 West Wacker Drive, Suite 2100
Chicago, Illinois 60606
John Wm. Butler, Jr. (JB 4711)
John K. Lyons (JL 4951)
Ron E. Meisler (RM 3026)

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
Kayalyn A. Marafioti (KM 9632)
Thomas J. Matz (TM 5986)

Attorneys for Delphi Corporation, et al.,
Debtors and Debtors-in-Possession

Delphi Legal Information Hotline:
Toll Free: (800) 718-5305
International: (248) 813-2698

Delphi Legal Information Website:
<http://www.delphidocket.com>

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11	
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DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)	
	:		
	:	(Jointly Administered)	
Debtors.	:		
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DEBTORS' SUPPLEMENTAL REPLY TO THE RESPONSE OF LAFONZA
WASHINGTON TO THE DEBTORS' (I) THIRD OMNIBUS OBJECTION
(SUBSTANTIVE) PURSUANT TO 11 U.S.C. § 502(B) AND FED. R. BANKR. P.
3007 TO CERTAIN (a) CLAIMS WITH INSUFFICIENT DOCUMENTATION, (b)
CLAIMS UNSUBSTANTIATED BY DEBTORS' BOOKS AND RECORDS, AND (c)
CLAIMS SUBJECT TO MODIFICATION AND (II) MOTION TO ESTIMATE
CONTINGENT AND UNLIQUIDATED CLAIMS PURSUANT TO 11 U.S.C. § 502(c)

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby submit its Supplemental Reply to the Response of Lafonza Washington to the Debtors' (I) Third Omnibus Objection (Substantive) Pursuant to 11 U.S.C. § 502(b) and Fed. R. Bankr. P. 3007 to Certain (A) Claims With Insufficient Documentation, (B) Claims Unsubstantiated by Debtors' Books and Records, and (C) Claims Subject to Modification and (II) Motion to Estimate Contingent and Unliquidated Claims Pursuant to 11 U.S.C. § 502(c) (this "Supplemental Reply"), and respectfully represent as follows:

Preliminary Statement

1. On October 28, 2005, claimant Lafonza Washington (the "Claimant"), who has no known relationship to any of the Debtors, filed four proofs of claim, claim nos. 257, 264, 288, and 297 (individually, an "October 2005 Proof of Claim" and, collectively, the "October 2005 Proofs of Claim") against the Debtors. Claim nos. 257 and 264 were filed against Delphi Corporation, and claim nos. 288 and 297 will be filed against Delphi Automotive Systems (Holding), Inc.. Each October 2005 Proof of Claim asserts that the Claimant is entitled to a \$30 million unsecured priority claim on the basis of, inter alia, involuntary servitude, six years of deprivation of General Motors-related income, and severance pay due to the Claimant based on the July 2, 1999 closing of the Buick City plant owned and operated by General Motors Corporation ("GM"). (Supporting Documents appended to each of Claimant's October 2005 Proof of Claim ¶¶ (v)(a), (vii), and (viii)). Without providing any calculation or explanation, the amount of the October 2005 Proofs of Claim purports to be comprised of compensation due to the Claimant for worker's compensation benefits, deprivation of certain property rights, and

payment of certain fees and expenses incurred by the Claimant over a period of more than 33 years, from June 13, 1973 through the present.

2. On December 27, 2005, the Claimant filed three documents purporting to be proofs of claim, claim nos. 1271, 1272, and 1334 (individually, a "December 2005 Proof of Claim" and, collectively, the "December 2005 Proofs of Claim" and, together with the October 2005 Proofs of Claim, the "Proofs of Claim"). The December 2005 Proofs of Claim contain various pleadings previously filed by the Claimant. None of these documents provide any rational explanation, documentation, evidence, or support for any of the claims asserted in the Proofs of Claim.

3. On October 31, 2006, the Debtors filed the Debtors' (I) Third Omnibus Objection (Substantive) Pursuant to 11 U.S.C. § 502(b) and Fed. R. Bankr. P. 3007 to Certain (A) Claims With Insufficient Documentation, (B) Claims Unsubstantiated by Debtors' Books and Records, and (C) Claims Subject to Modification and (II) Motion to Estimate Contingent and Unliquidated Claims Pursuant to 11 U.S.C. § 502(c) (Docket No. 5452) (the "Third Omnibus Claims Objection"). In the Third Omnibus Claims Objection the Debtors objected to, and sought an order disallowing and expunging, inter alia, each of the Proofs of Claim. (Docket No. 5452, ¶ 19, Ex. C-1).

4. On November 27, 2006,¹ the Claimant filed documents with the Court that the Debtors assume were intended to be a response to the Third Omnibus Claims Objection, despite such documents neither being styled as such, nor containing the information required to be included in a proper response (Docket No. 5863) (the "Response"). In the Response, the

¹ The deadline to file a response to the Third Omnibus Claims Objection was November 24, 2006 at 4:00 p.m. (Prevailing Eastern Time). See Third Omnibus Claims Objection, ¶ 46.

Claimant asserts a number of baseless allegations against, inter alia, the Debtors, GM, JPMorgan Chase Bank, and the UAW, and requests that the Court "strike" the Third Omnibus Claims Objection.

5. On December 11, 2006, the Debtors provided the Claimant, and filed with the Court, a Notice of Hearing With Respect to Debtors Objection to Proof of Claim Nos. 257, 264, 288, 297, 1271, 1272, and 1334 (Docket No. 6110) in which the Debtors provided notice that Debtors' Third Omnibus Claims Objection with respect to the Proofs of Claim will be heard at a Sufficiency Hearing on January 12, 2007.

6. The Debtors respectfully submit that because neither the Claimant nor his spouse was ever an employee of the Debtors, the Claimant was never and is not now entitled to any employment-related compensation or severance pay from the Debtors. The Claimant simply has not set forth any allegations that, even if true, would establish a claim against the Debtors. Accordingly, the Third Omnibus Claims Objection should be sustained with respect to the Proofs of Claim, and the Proofs of Claim should be disallowed and expunged.

Argument

7. The Claimant asserts that Delphi owes him \$30 million² because in September of 1999, after thirty-two years of employment with GM, the Claimant was given the option to transfer to the Debtors' manufacturing facility in Saginaw, Michigan (the "Saginaw Facility"). (Supporting Documents appended to the October 2005 Proofs of Claim, ¶¶ (A)(i) and (v)). This option to transfer to the Saginaw Facility, which he apparently declined, is the Claimant's only connection to the Debtors. However, the mere fact that the Claimant was

² Since the filing of the Proofs of Claim, the Claimant has filed numerous documents with the Court asserting that his claims exceed \$1 billion as a result of accrued interest and other asserted claims. The Claimant has never, however, amended his Proofs of Claim to assert these larger amounts.

offered a position at the Debtors by GM does not establish a claim against the Debtors because the Claimant does not assert or offer proof that the Claimant was ever actually an employee of the Debtors. Indeed, the Claimant has failed to establish any causal connection between an apparently unaccepted offer to transfer to the Saginaw Facility and a claim for \$30 million.

8. The Claimant states that he was "hired into the General Motors Corp. (GM) on 6-13-73 at the age of 18" and "perform[ed] . . . labor for it '32' years after initial hirein (sic)." (Id.) (emphasis in original). The only reference to possible employment by any of the Debtors that the Claimant asserts is that "GM attempted to force this Claimant to 'INVOLUNTARILY' transfer to Delphi in Saginaw, Michigan, after it permanently closed the Buick City plant." (Id., ¶ (A)(v)(b)) (emphasis in original). However, the Claimant apparently did not accept the transfer because, to the best of the Debtors' knowledge, the Claimant was never an employee of any of the Debtors. Because the Claimant was never an employee of the Debtors, and because he has failed to assert alternate grounds upon which he could conceivably base a valid claim, the Debtors assert that they are not, and were not ever, liable to the Claimant.

9. The burden of proof to establish a claim against an estate rests on the claimant and, if a proof of claim does not include sufficient factual support, the proof of claim is not entitled to a presumption of prima facie validity pursuant to Bankruptcy Rule 3001(f) . In re WorldCom, Inc., No. 02-13533, 2005 WL 3832065, at *4 (Bankr. S.D.N.Y. Dec. 29, 2005) (only a claim that alleges facts sufficient to support legal liability to claimant satisfies claimant's initial obligation to file substantiated proof of claim); see also In re Allegheny Intern., Inc., 954 F.2d 167, 174 (3d Cir. 1992) (in its initial proof of claim filing, claimant must allege facts sufficient to support claim); In re Chiro Plus, Inc. 339 B.R. 111, 113 (Bankr. D.N.J. 2006) (claimant bears initial burden of sufficiently alleging claim and establishing facts to support legal liability); In re

Armstrong Finishing, L.L.C., No. 99-11576-C11, 2001 WL 1700029, at *2 (Bankr. M.D.N.C. May 2, 2001) (only when claimant alleges facts sufficient to support its proof of claim is it entitled to have claim considered prima facie valid); In re United Cos. Fin. Corp., 267 B.R. 524, 527 (Bankr. D. Del. 2000) (claimant must allege facts sufficient to support legal basis for its claim to have claim make prima facie case).

10. The Debtors believe that the standard, at the Sufficiency Hearing stage, for the Court to determine whether the Claimant has met his initial burden of proof to establish a claim should be similar to the standard employed by courts in deciding a motion to dismiss under Federal Rule 12(b)(6) and Bankruptcy Rule 7012. Pursuant to that standard, a motion to dismiss should be granted "if it plainly appears that the non-movant 'can prove no set of facts in support of his claim which would entitle him to relief.'" In re Lopes, 339 B.R. 82, 86 (Bankr. S.D.N.Y. 2006) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Here, the Claimant has not proved, and cannot prove, any set of facts that support a right to payment from the Debtors.

11. Because the only plausible basis for the Claimant to assert a claim rests entirely on the Claimant's past or present employment with the Debtors, the claimant has not met his burden of proof, and cannot prove facts supporting his claim, for the simple reason that the Claimant has not alleged that he was ever employed by the Debtors. Further, neither the Proofs of Claim nor the Response assert any other valid basis upon which the Claimant could base a claim. Accordingly, the Third Omnibus Claims Objection should be sustained as to the Proofs of Claim; and the Proofs of Claim should be disallowed and expunged.

Memorandum of Law

12. Because the legal points and authorities upon which this Reply relies are incorporated herein, the Debtors respectfully request that the requirement of the service and

filing of a separate memorandum of law under Local Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York be deemed satisfied.

WHEREFORE the Debtors respectfully request the Court enter an order (i) sustaining the Third Omnibus Claims Objection as to the Proofs of Claim, (ii) disallowing and expunging the Proofs of Claim, and (iii) granting such further and other relief the Court deems just and proper.

Dated: New York, New York
January 2, 2007

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

By: /s/ John Wm. Butler, Jr.

John Wm. Butler, Jr. (JB 4711)
John K. Lyons (JL 4951)
Ron E. Meisler (RM 3026)
333 West Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700

- and -

By: /s/ Kayalyn A. Marafioti

Kayalyn A. Marafioti (KM 9632)
Thomas J. Matz (TM 5986)
Four Times Square
New York, New York 10036
(212) 735-3000

Attorneys for Delphi Corporation, et al.,
Debtors and Debtors-in-Possession